

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

Susan Neese, M.D and **James Hurly, M.D.**, on behalf of themselves and others similarly situated,

Plaintiffs,

v.

Xavier Becerra, in his official capacity as Secretary of Health and Human Services; **United States of America**,

Defendants.

Case No. 2:21-cv-00163-Z

**[PROPOSED] ORDER GRANTING PLAINTIFFS’
MOTION FOR CLASS CERTIFICATION**

The plaintiffs’ motion for class certification is granted.

The Court certifies the following class under Rule 23(b)(2) of the federal rules of civil procedure:

All health-care providers subject to section 1557 of the Affordable Care Act.

Susan Neese and James Hurly are appointed class representatives. Jonathan F. Mitchell is appointed class counsel under FRCP 23(g). The class claims are:

1. Whether Secretary Becerra’s interpretation of section 1557 of the Affordable Care Act, which appears in his Notification of Interpretation and Enforcement of May 10, 2021, is inconsistent with the statutory definition of “sex” discrimination, as construed by the Supreme Court in *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020).
2. Whether the prohibition on “sex” discrimination in section 1557 of the Affordable Care Act encompasses only situations in which a provider would have acted differently toward an identically situated member of the opposite biological sex.

Dated: _____

MATTHEW J. KACSMARYK
UNITED STATES DISTRICT JUDGE